

HOUSE BILL REPORT

HB 2848

As Reported by House Committee On:
Judiciary

Title: An act relating to protecting confidentiality of domestic violence information.

Brief Description: Protecting confidentiality of domestic violence information.

Sponsors: Representatives Lantz, Ericks, Santos, Williams, Rodne, Priest, Hudgins, Darneille, Morrell, Kessler, McDonald, Roberts, McCoy, Kenney, Campbell, P. Sullivan, Wallace, Hasegawa, Kilmer, Green, Simpson, Wood, Ormsby and Springer.

Brief History:

Committee Activity:

Judiciary: 1/27/06, 1/30/06 [DPS].

Brief Summary of Substitute Bill

- Makes communications between a domestic violence victim and a domestic violence advocate privileged.
- Prohibits a domestic violence program from disclosing information about a recipient of domestic violence services unless the recipient consents or unless required by statute or court order.
- Contains other provisions regarding confidentiality of records held by the Department of Social and Health Services.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Lantz, Chair; Flannigan, Vice Chair; Williams, Vice Chair; Priest, Ranking Minority Member; Rodne, Assistant Ranking Minority Member; Campbell, Kirby, Serben, Springer and Wood.

Staff: Trudes Tango (786-7384).

Background:

Privileged Communications

The judiciary has inherent power to compel witnesses to appear and testify in judicial proceedings so that the court will receive all relevant evidence. However, the common law

and statutory law recognize exceptions to compelled testimony in some circumstances, including "testimonial privileges." Privileges are recognized when certain classes of relationships or communications within those relationships are deemed of such importance that they are to be protected.

Washington statutory law establishes a number of privileges, including communications made by a sexual assault victim to a sexual assault victim advocate. The advocate may disclose information without the consent of the victim to prevent a clear, imminent risk of serious physical injury or death. The advocate is immune from civil or criminal action that arises from a good faith disclosure. In an action arising from a disclosure, the advocate's good faith is presumed.

DSHS and domestic violence information

The Department of Social and Health Services (DSHS) administers state and federal funds for domestic violence programs, which include shelters. The DSHS establishes minimum standards for shelters receiving grants. The shelters must provide certain services, including client advocacy and counseling. Client records maintained by a domestic violence program are not subject to discovery in any judicial proceeding unless certain conditions are met.

The DSHS also administers and disburses state and federal public assistance funds. The DSHS may not disclose the contents of any records, files, or other communications, unless the disclosure is directly connected with the administration of the public assistance programs. However, an individual may inquire to the DSHS whether a named person is receiving public assistance, and the DSHS must provide the individual with a "yes" or "no" answer.

Summary of Substitute Bill:

Privileged communications

Communications made between a domestic violence victim and domestic violence advocate are privileged and may not be disclosed without the consent of the victim. A "domestic violence advocate" is an employee or supervised volunteer from a community-based domestic violence program or human services program that provides information, advocacy, counseling, crisis intervention, emergency shelter, or support to victims of domestic violence and who is not employed by or under the direct supervision of law enforcement, a prosecutor's office, or child protective services of the DSHS.

An advocate may disclose confidential communications without the victim's consent if failure to do so is likely to result in a clear, imminent risk of serious physical injury or death. The privilege does not relieve a domestic violence advocate from the mandatory reporting requirements for child abuse. Domestic violence advocates are immune from liability for good faith disclosure. In an action arising out of disclosure, the advocate's good faith is presumed.

DSHS and domestic violence information

Unless required by court order, a domestic violence program and those assisting in delivering services, or any agent, employee, or volunteer of a domestic violence program shall not disclose information about a recipient of shelter, advocacy, or counseling without the recipient's written, signed authorization.

The recipient's authorization must have a reasonable time limit on the duration. If the authorization does not have a specific expiration date, the authorization expires 90 days after the date it was signed. The disclosure is limited to the extent authorized by the recipient. An authorization is not a waiver of the recipient's rights or privileges under other statutes, rules of evidence, or common law.

If disclosure is required by statute or court order, the domestic violence program shall make reasonable attempts to notify the recipient of the disclosure. If personally identifying information is to be disclosed, the domestic violence program must take steps necessary to protect the privacy and safety of the persons affected by the disclosure.

The DSHS must adopt policies and procedures to protect the confidentiality of information about recipients of public assistance who have disclosed to the department that they are victims of domestic violence or stalking. The policies must address the sharing of information between agencies and other partners. The DSHS must consider alternatives to providing the "yes" or "no" answer regarding whether a person is receiving public assistance.

For nonshelter community-based services receiving funding from the DSHS, the department must establish minimum standards designed to enhance safety and security by means such as, but not limited to, client advocacy, client confidentiality, and counseling.

Substitute Bill Compared to Original Bill:

The substitute bill: (a) adds an intent section; (b) clarifies that the privilege does not relieve a domestic violence advocate from the mandatory reporting requirement; (c) directs the DSHS to consider alternatives to providing a "yes" or "no" answer regarding whether a person is receiving public assistance; and (d) clarifies that the DSHS must adopt policies of confidentiality for those recipients of public assistance who disclose to the department that they are victims of domestic violence or stalking.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: When a domestic violence victim enters a shelter, it is confusing for the victim to understand when the victim's communication will or will not be privileged. If there are attorneys or sexual assault advocates working in the shelter, the victim's communications with them are privileged, but not the communications with a domestic violence victim

advocate. The bill furthers the policy of preventing domestic violence. The privilege is narrowly tailored and language has been worked out with the defense bar.

Testimony Against: None.

Persons Testifying: Representative Zack Hudgins; Grace Huang, Washington Coalition against Domestic Violence; Scott Douglas, Thurston County Volunteer Legal Services; Kevin Rundle, YWCA Pierce County; and Cherie Tessier.

Persons Signed In To Testify But Not Testifying: None.